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04-749

SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

ANDREAS PLONKA,

Petitioner,

—v.—

RICHARD BROWN, DONALD LARAWAY, STEVE CLARK, KAREN SASTRA, FRANK SCHAEFFER, RONALD DECKER, GERALD KRAMER, ANDREW SKROBANSKI, DEAN EDWARDS, LAWRENCE BROWN, ROBERT GOULDIN and MICHAEL GETMAN,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS FOR REVIEW
Pertaining to Respondents Getman and Richard Brown

Upon proof and a record that Respondents Getman and Richard Brown were at all times prosecuting Petitioner Plonka as Assistant District Attorneys, are their quasi-judicial activities entitled to absolute immunity ?

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AUTHORITIES

"Where a plaintiff seeks damages against a district attorney's office and assistant district attorneys in their official capacity for specific actions related to the plaintiff's prosecution, the Eleventh Amendment to the United States Constitution shields them from liability."

U.S.C.A. Const. Amend. 11.

"To state a Section 1983 claim, a plaintiff must allege that: (1) the challenged conduct was attributable at least in part to a person acting under color of state law, and (2) such conduct deprived the plaintiff of a right, privilege, or immunity secured by the Constitution or laws of the United States."

42 U.S.C.A. §§ 1983.

It is well established that "prosecutors are entitled to absolute immunity from suits for damages arising from activities that are 'intimately associated with the judicial phase of the criminal process."

Carson v. Rivers, 35 F. Supp.2d 250, 262 (E.D.N.Y.1999) (quoting Barbera v. Smith, 836 F.2d 96, 99 (2d. Cir.1987)).

ARGUMENT

Respondents Getman and Richard Brown answered the pro se suit filed by Petitioner. Respondents Getman and Richard Brown at all times prosecuted Petitioner in their roles as Assistant District Attorneys for the County of Otsego, State of New York.

These Respondents interposed defenses, including qualified and absolute immunity by reason of their quasi-judicial activities in prosecuting Petitioner.

This Petition should be dismissed for the following reasons:

1. The United States Court of Appeals Second Circuit did not render this Decision in conflict with the decision of any other United States Court of Appeals.

2. No state court of last resort decided an important federal question in a way that conflicts with the Decision herein.

3. The application of the rule of absolute immunity has been decided by this Court, and need not be revisited in this case.

CONCLUSION

For all reasons stated in this Brief in Opposition, Respondents Michael Getman and Richard Brown seek dismissal of the Petition.

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